NO. 4-10-0152 Filed 6/30/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
MARK QUAID BROWN,	)	No. 09CF261
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

Held: Evidence was sufficient to prove defendant guilty of unlawful possession of a controlled substance beyond a reasonable doubt where officer witnessed furtive movements in the area where controlled substance was later found.

In December 2009, a jury convicted defendant, Mark Quaid Brown, of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2008)). In January 2010, the trial court denied his posttrial motion for retrial, sentenced him to 18 months' probation and 30 hours of community service, and ordered him to pay various fines and fees. Defendant appeals, arguing the State failed to produce sufficient evidence to prove him guilty of unlawful possession of a controlled substance beyond a reasonable doubt. We disagree and affirm.

I. BACKGROUND

Officer Kendra DeRosa of the Normal police department was the only witness to testify at trial. According to her testimony, in March 2009, DeRosa stopped a vehicle for minor traffic violations. Defendant was among the six occupants of the car. He was seated in the

backseat, directly behind the driver. Upon making contact with the occupants, DeRosa smelled what she suspected to be burnt cannabis and decided to run everyone's identification through her computer. While running background checks on all of the occupants, DeRosa noticed defendant's shoulder dip "as if he was trying to push something or he was making some sort of furtive movement downward towards the seat and the floorboard."

Once backup arrived, DeRosa conducted a search of both the front and rear seats on the driver's side of the vehicle. Another officer simultaneously conducted a search of the rest of the interior of the vehicle. DeRosa discovered a bag with four pills stuck under the lip of the backseat. The pills were directly under the portion of the seat defendant had been sitting in and in the vicinity of the suspicious movements she had observed. Upon making this discovery, DeRosa immediately questioned defendant about the pills. According to DeRosa's testimony, defendant told her "the pills don't belong to me" and "[y]ou didn't find those pills on me." The defense stipulated the pills were a controlled substance in that expert testimony would have shown they contained dihydrocodeinone.

On this evidence, the jury found defendant guilty of unlawful possession of a controlled substance. This appeal followed.

II. ANALYSIS

On appeal, defendant argues the State failed to provide sufficient evidence to prove him guilty of unlawful possession of a controlled substance beyond a reasonable doubt. We disagree.

In reviewing a challenge to the sufficiency of the evidence, this court looks to "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational

trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original; internal quotation marks omitted.) *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). "When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant." *Id*. "[A] criminal conviction will not be overturned unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Id*.

"In reviewing a conviction for possession of a controlled substance, the deciding question is whether defendant had knowledge and possession of the drugs." *Givens*, 237 Ill. 2d at 334-35, 934 N.E.2d at 484. Knowledge can rarely be proved directly but can be inferred from possession, as well as by defendant's actions. *People v. Roberts*, 263 Ill. App. 3d 348, 352, 636 N.E.2d 86, 90 (1994). As this court has recognized, possession can be either actual or constructive. *People v. Neylon*, 327 Ill. App. 3d 300, 306, 762 N.E.2d 1127, 1133 (2002). Actual possession requires present personal dominion over the illegal substance but does not require actual physical contact with it. *People v. Schmalz*, 194 Ill. 2d 75, 82, 740 N.E.2d 775, 779 (2000). Constructive possession exists where one has the intent and capability to maintain control over the illegal substance. *Neylon*, 327 Ill. App. 3d at 306, 762 N.E.2d at 1133. Because evidence of constructive possession is often circumstantial, it may be inferred from the facts. *Id*. Where constructive possession can be shown, the State need not show actual possession. *Id*.

In the present case, the pills were found directly under where defendant had been seated in the car, so they were easily within his reach. Further, DeRosa testified to seeing defendant make "furtive movements" after she had made contact with the occupants of the car. DeRosa also testified defendant was the only person in the car she saw make any movements.

Under these circumstances, a reasonable juror could infer defendant was attempting to conceal the pills under his seat. This could be seen as evidence of actual possession. See *People v. Carodine*, 374 Ill. App. 3d 16, 25, 869 N.E.2d 869, 878 (2007) ("[P]ossession is actual when [the defendant] exercises 'present and personal dominion over the substance,' by acts such as hiding or trying to dispose of the item."). Additionally, the fact the pills were easily within arm's reach of defendant, thus allowing him immediate access to them, could be seen as actual possession by defendant. See *Schmalz*, 194 Ill. 2d at 82-83, 740 N.E.2d at 779-80 (The defendant's conviction was affirmed where she was on the floor a foot away from the illegal substance, did not live in the house, and was never observed with the substance in her physical control.). Once possession is established, knowledge can be inferred by the trier of fact. *Schmalz*, 194 Ill. 2d at 82, 740 N.E.2d at 779. The fact other passengers were in the car does not help defendant as possession can be joint but still exclusive. See *Id*. In any event, DeRosa testified she did not see any of the other passengers make any movements at all, let alone in the vicinity of the pills.

Defendant argues his case is analogous to the case of *People v. Jackson*, 23 Ill. 2d 360, 365, 178 N.E.2d 320, 323 (1961), which resulted in the defendant's conviction for possession being reversed. However, we conclude *Jackson* is distinguishable from the facts of this case. In *Jackson*, 23 Ill. 2d at 364, 178 N.E.2d at 322, the illegal substance the defendant purportedly possessed was found in a common area of an apartment building, which was accessible via seven other apartments and was not within the immediate control of the defendant. Additionally, no observations were made of the defendant's actions in the actual vicinity of the illegal substance, and she was never observed to have had it in her actual physical possession. *Id*. In the present case, the car was not subject to the unlimited use of others, the drugs were within

the immediate reach of defendant, and the officer was able to observe suspicious movements by defendant in close proximity to where the drugs were found. The circumstances of this case are not analogous to those in *Jackson*.

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

Affirmed.